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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 505

CHARLES KOVACS,

Appellant,

vs.

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

STATEMENT OPPOSING JURISDICTION

LOUIS JOSEPHSON,
Counsel for Appellee.

NEW JERSEY COURT OF ERRORS AND APPEALS

CHARLES KOVACS,

Appellant,

vs.

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON,

Appellee

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF GROUNDS AGAINST JURISDICTION OF THE SUPREME COURT

Appellee, Albert Cooper, Jr., Judge of the First District Police Court of Trenton, in the above-entitled cause, setting forth the matter or grounds against the jurisdiction of this court asserted by the appellant, alleges and says that:

1. The only provision and section of the ordinance of the City of Trenton which the appellant was convicted of violating is that known and described as Section 4, which prohibits the use of what is commonly known as a sound truck upon the public streets of the City of Trenton. Appellee submitting that appellant's right to freedom of speech, freedom of press, freedom to communicate information and opinions to others and freedom of assembly, as set forth in the first amendment to the United States Constitution, has in no way been denied or violated, as the said constitu-

tional right aforestated does not include the right to use a machine for the magnifying and throwing of the human voice for great distances upon the public streets of the city; that being the only *justiciable* issue in this cause.

2. The provisions of Section 4 of the ordinance aforestated, while being prohibitory, is within the police power of the City of Trenton, since a city may, in the interest of public order and peace, prohibit the use of sound trucks upon public streets.

3. Such ordinance has not been construed and applied by the courts below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, of press, of assembly, and to communicate information and opinions to others, as stated, by the appellant in paragraph 3 of "Statements of Points Relied On." The construction of said ordinance by the courts below having been to the contrary. Ordinance in question is presumptively constitutional and appellee is not called upon to establish that said ordinance is necessary to prevent a clear, present and substantial danger to the peace and order, or to the right of a state to protect the welfare of its inhabitants; said ordinance being constitutional for the reasons aforestated without regard to any legal doctrines or constructions relating to the "clear and present danger rule," or any other interpretations or qualifications.

4. Section four of the ordinance aforestated prohibits the use and operation of a sound truck for any purpose whatsoever upon any public street in the City of Trenton, the same being definite, certain and clear, and is, therefore, not obscure, vague and indefinite as alleged in paragraph 4 of "Statement of Points Relied On." Said provision of the ordinance is in no way violative of the 14th Amendment of the Constitution of the United States, the provisions of said amendment in no way having any bearing or rela-

tionship to the provisions of said section of the ordinance aforestated.

5. The allegations alleged and contained in paragraph 5 of the "Statements of Points Relied On," have no application whatsoever to the provisions of Section 4 of said ordinance, and relate only to other sections of the ordinance not in issue in this cause.

For the above-stated reasons it is submitted that this Honorable Court should not entertain the jurisdiction of said cause asserted by the appellant.

Respectfully submitted,

LOUIS JOSEPHSON,
Municipal Building,
Trenton, N. J.,
Attorney for Appellee.

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